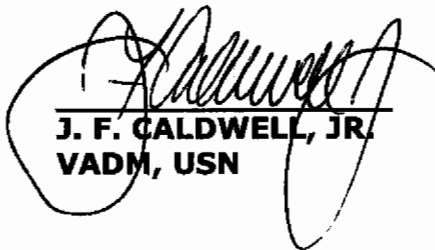


NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

Subj: SENIOR OFFICIAL CASE 201300862; ALLEGED MISCONDUCT
RADM MERRILL RUCK, USN (RET), FORMER-EXECUTIVE DIRECTOR,
NAVAL POSTGRADUATE SCHOOL FOUNDATION




J. F. CALDWELL, JR.
VADM, USN

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Office of the Naval Inspector General**Case Number: 201300862****Report of Investigation****27 Mar 2014**

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Preliminary Statement

1. On November 21, 2012, the Naval Inspector General issued two Reports of Investigation (ROIs) documenting its investigation of allegations of misconduct by Vice Admiral Daniel T. Oliver, USN (Ret), Naval Postgraduate School (NPS) President (Number 201103025), and Dr. Leonard A. Ferrari, NPS Executive Vice President and Provost (Number 201203847).

2. While investigating the allegations of misconduct by President Oliver and Dr. Ferrari, we discovered separate instances of potential misconduct by various NPS faculty and staff members. One area of potential misconduct that we identified was that various faculty and staff members at NPS solicited the NPS Foundation (Foundation) and accepted gifts on behalf of the U.S. Navy in violation of the applicable gift acceptance statute and regulations. In most instances the gifts were checks to reimburse faculty and staff for expenses that they incurred for events that were related to the operation of NPS. In other instances, the Foundation made payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS.

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3. The Foundation is a non-profit charitable organization whose primary mission is to support NPS.¹ The Foundation supports NPS through gifts of money and property.

4. Chief Naval Operations (CNO) delegated gift acceptance authority to the President, NPS, for gifts of \$12,000 or less. No one else at NPS has authority to accept gifts for the Navy. Gifts greater than \$12,000 can only be accepted by the Secretary of the Navy, CNO, Vice Chief Naval Operations, and Director of Navy Staff and other very senior officials. Department of Defense personnel are prohibited from soliciting gifts.

5. The Assistant for Administration, Under Secretary of the Navy (AA/USN), deposits properly accepted monetary gifts into the Navy General Gift Fund. AA/USN, in turn, distributes the funds to NPS. At NPS, the funds are placed in the President's Gift Fund account.

6. The NPS Comptroller maintains the President's Gift Fund account. Within the President's Gift Fund, there are accounts for various positions and purposes. These accounts enable the Foundation or other donors to make directed (earmarked) gifts for specific areas of research or study or to a specified school, department, institute, center, academic group, or faculty or staff member.

7. Merrill Ruck, USN (Ret), was the Foundation's Executive Director from May 2006 to November 2013. We documented in the Oliver and Ferrari Reports of Investigation, as well as eleven subsequent Reports of Investigation, that the Foundation reimbursed NPS faculty and staff at RADM Ruck's direction. He also authorized the Foundation to make payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS. We found that these payments were gifts to the Navy that were improperly accepted by the NPS faculty and staff.

8. In two Reports of Investigation we documented that RADM Ruck authorized payments from a Foundation account to NPS faculty

¹ The Foundation is recognized as exempt from federal tax under section 501(c)(3) of the Internal Revenue Code.

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members to supplement their salaries. These payments are addressed in this ROI.

9. We formulated the following allegation:

Allegation: That RADM Ruck authorized the payment of money by the Naval Post Graduate School Foundation to (b) [REDACTED], (b) (6), (b) (7)(C) [REDACTED], and (b) (6), (b) (7)(C) [REDACTED] in violation of 18 United States Code (USC) 209(a), Salary of Government officials and employees payable only by United States.²

Conclusion: The allegation is substantiated.

Findings of Fact

10. Navis is a private corporation that developed software for managing logistics and container terminal operating systems for cargo movement through ports.³ On March 31, 2005, Navis donated \$25,000 to the Foundation. On August 7, 2007, Navis donated an additional \$40,000 to the Foundation. In the letters to the Foundation accompanying the donations, Navis stated that it intended that the donations be used to support the Department of Operations Research (OR) at NPS.

11. After receiving the donations from Navis, the Foundation did not offer Navis's gift to NPS. Instead it deposited the funds into an internal Foundation account, the Navis account. With funds from the Navis account, the Foundation issued nine checks to three OR Department professors, (b) [REDACTED], (b) (6), (b) (7)(C) [REDACTED] (b) [REDACTED] [REDACTED]; and (b) [REDACTED] [REDACTED].

12. (b) [REDACTED] and (b) [REDACTED] are subjects of prior investigations. In our ROIs (b) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] we determined they (b) (6) [REDACTED] accepted money from the Foundation in violation of 18 USC 209(a). We found that each of

² 18 USC 209(a) is a criminal statute. Accordingly, we coordinated with the Naval Criminal Investigative Service, Assistants from the Office of the United States Attorney for the Northern District of California, and an Internal Revenue Service Special Agent before initiating this investigation.

³ Navis was purchased by another corporation and no longer exists.

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the checks that the Foundation issued to (b) (6) and (b) (6) was compensation for performance of their duties as professors at NPS.

13. (b) (6) was not a subject of a Naval Inspector General investigation. The evidence established that (b) (6) gave (b) (6) a check from the Foundation for \$5,000. (b) (6) testified that based on the fact that (b) (6) was his (b) (6), (b) (7)(C); he did not question the propriety of accepting the Foundation's check. (b) (6) testified that when he presented the check to (b) (6), he told him it was an award for his work assisting a student with a thesis. He added that (b) (6) was unaware that the check was not an authorized award issued by the Foundation.

14. RADM Ruck declined to testify in this investigation. However, he provided a written statement in which he acknowledged that the Foundation issued nine checks, each for \$5,000, to (b) (6), (b) (6), and (b) (6). (6 checks to (b) (6), 2 Checks to (b) (6), and 1 Check to (b) (6)). Of the nine checks, seven were issued after RADM Ruck became the Foundation's Executive Director in May 2006 at RADM Ruck's direction.

15. (b) (6) testified that the Foundation issued checks from the Navis account based on his recommendations. The only people that (b) (6) identified for checks were (b) (6), (b) (6), and (b) (6), (b) (6). (b) (6) stated that checks were only for work that related to Navis's line of business. He testified:

These were awards that were made based on work that we had done, research that we had done, which was related to research that was found beneficial for this company called Navis.

16. (b) (6) testified that the Foundation set the conditions when a check could be issued. He stated:

They said that they could make awards available if it was research that was found to be related or along the lines of research that would be beneficial for - or

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beneficial is perhaps not the right word - but related to work of the type that Navis would find beneficial.

17. Regarding the criteria for what was appropriate work for a check, (b) (6) stated that the Foundation did not give him guidance. He stated, "the criteria . . . were not specifically spelled out."

18. (b) (6) testified that Navis provided topics about which they were interested. He said that he in turn recommended topics to students on which to research and write their theses. He stated that he recommended more topics to students than those which Navis had an interest.

19. (b) (6) stated that the work for which he recommended that the Foundation give checks was either advising students on theses related to Navis's business or for presentations at conferences that were sponsored by Navis and were called NavisWorld.⁴ He testified the students who wrote the theses did not receive awards.

20. (b) (6) also testified that all the work for which he asked for checks from the Foundation was official government work. He testified that advising students on their thesis was part of (b) (6) and (b) (6)'s official duties at NPS. He said, "It's absolutely part of our job." (b) (6) also testified that presentations by (b) (6) at NavisWorld conferences were part of (b) (6)'s professional duties.

21. We discovered two e-mail exchanges between (b) (6) and RADM Ruck that were related to issuing checks. On May 15, 2006, (b) (6) sent an e-mail to RADM Ruck in which he provided what (b) (6) characterized as "a brief summary of NPS involvement with Navis." On May 18, (b) (6) and (b) (6) each received a check for \$5,000 from the Foundation.

22. On June 1, 2009, (b) (6) sent an e-mail to RADM Ruck in which he requested that the Foundation issue three checks, for \$5,000 each, to (b) (6), (b) (6), and (b) (6), (b) (6), (b) (6).

⁴ (b) (6), (b) (6) testified that NavisWorld conferences were "attended by several hundred people from around the world."

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wrote that the checks for (b) [REDACTED] and him were for advising students. The check for (b) [REDACTED] was for "his presentation last year at NavisWorld." Five minutes after receiving (b) [REDACTED]'s e-mail, RADM Ruck forwarded the e-mail to the Foundations' bookkeeper and wrote, "please make out the 3 checks for \$5,000" from the Navis account. The three checks are dated June 4 and all signed by RADM Ruck.

23. (b) [REDACTED] acknowledged that he received a check from the Foundation in 2006 but testified that he could not recall why it was issued. Regarding the 2009 check, (b) [REDACTED] testified that a student that he was advising was the primary presenter at a presentation at NavisWorld in 2008 for which (b) [REDACTED] received \$5,000 in 2009. He stated he stood with the student during the presentation and fielded questions after the presentation.⁵ (b) [REDACTED] said he did not recall whether he was in a leave status at the time, but considered his presence part of his official duties as an NPS faculty member.

24. In his statement, RADM Ruck asserted that the checks issued to (b) [REDACTED] and (b) [REDACTED] were "awards for excellence in scientific research." He stated that checks were issued "[u]nder the provisions" of NAVPGSCOLINST 1650.1E, "The Naval Postgraduate School Foundation Research Award for Excellence in Scientific Research." He characterized the checks that the Foundation issued to (b) [REDACTED] as "honoraria."

Applicable Standard

25. 18 USC 209(a) prohibits executive branch employees from receiving "any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government . . . from any source other than the Government of the United States."

⁵ In an e-mail (b) (6), (b) [REDACTED] sent RADM Ruck on March 19, 2008, (b) (6), (b) [REDACTED] characterized the presentation differently. In that e-mail he wrote that he had agreed to deliver "a keynote address" at the upcoming Navis World.

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26. 18 USC 209(a) further states:

Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section

27. 18 USC 216 provides that both criminal and civil actions may be brought under 18 USC 209(a). 18 USC 216(b) states that the standard of proof in a civil action for conduct constituting an offence under 18 USC 209(a) is proof by a preponderance of the evidence.⁶

28. Our investigations are administrative. As such, a preponderance of the evidence standard of proof is applicable.

29. Section 209(a) has four elements, each of which must be established by a preponderance of the evidence, in order to substantiate an allegation. The elements are:

- (1) receipt of salary or contribution to or supplementation of salary,
- (2) as compensation,
- (3) for services as an employee of the United States, and
- (4) from any source other than the Government of the United States.

30. In applying 18 USC 209(a) we look to the Office of Government Ethics, Memorandum dated July 1, 2002, from Amy L. Comstock, Director, to Designated Agency Ethics Officials Regarding 18 USC 209 Guidance (OGE Memo). That memorandum addresses each of the elements of Section 209(a).

⁶ In a criminal prosecution the standard of proof is beyond a reasonable doubt.

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31. The OGE Memo states that salary or a contribution to or supplement of salary "can be any thing of monetary value received by an employee." The memorandum identifies both one-time payments and periodic payments.

32. The second element, compensation, requires "a connection between the public employment and the private payment." The OGE Memo states:

Specifically, the payment must be compensation for undertaking or performing Government service. To make out an offense under section 209, there must be a direct linkage between the thing of value paid to the employee and the official services rendered by the employee.

33. The third element requires that the employee rendered a Government service. The Memorandum states:

a violation of section 209 requires that compensation be paid for "the services an employee provides, or is expected to provide, to the Government."

34. The final element is that the payment must be from a source other than the Government of the United States.

35. The OGE Memo also states that *bona fide* public service awards do not violate section 209 because "intent to compensate for Government services cannot be inferred." As an example, the OGE Memo states that where an organization "applied long-standing written criteria in judging all of the candidates," such an award is a *bona fide* public service award. The OGE Memo also references an earlier Department of Justice, Office of Legal Counsel (OLC) opinion in which OLC stated that they "have recognized implicit exceptions [to section 209] for commemorative awards for public service."⁷

⁷ Gifts Received on Official Travel, 8 Op. Off. Legal Counsel 143 (1984).

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Analysis

36. In addressing whether RADM Ruck violated 18 USC 209(a), we must first determine whether the receipt of the checks by (b) (6), (b) (6), and (b) (6), was a violation of section 209.⁸

37. As we reported in our (b) (6) and (b) (6), ROIs, we determined that (b) (6) and (b) (6) accepted payments to supplement their salaries in violation of 18 USC 209(a). The testimonial and documentary evidence established, by a preponderance of the evidence, each of the four elements of 18 USC 209(a). They are:

(1) (b) (6), (b) (6), and (b) (6), received a monetary contribution to or supplementation of salary. The Foundation issued to them nine checks, each check was for \$5,000.

(2) The Foundation compensated (b) (6), (b) (6), and (b) (6). The checks issued from the Foundation to them were directly linked to their employment as NPS faculty members. (b) (6) testified that the Foundation issued the checks based on his requests and that he only made requests based on work that (b) (6), (b) (6), and (b) (6) performed that was related to their official duty.

(3) (b) (6), (b) (6), and (b) (6), received the compensation for performing their official duties as professors in the OR department. (b) (6) testified that the Foundation set conditions for when a check was appropriate. He said that checks were for research that was beneficial to Navis and that the work for which he recommended that the Foundation give checks was either advising students on theses related to Navis's business or for making a presentation at a conference on a topic related to Navis. He also testified that all the work for which he recommended checks was for official work as an NPS faculty member.

⁸ Although we did not find that (b) (6), (b) (6) violated 18 USC 209(a) for the reasons stated above, we did conclude that the \$5,000 paid by the Foundation was a supplement of his income. Accordingly, for purposes of assessing RADM Ruck's conduct, we included the check that was issued to (b) (6), (b) (6).

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(4) The payments came from the Foundation, a source other than the Government of the United States.

38. Next, we must determine whether RADM Ruck supplemented (b) [REDACTED], (b) (6), (b) [REDACTED], and (b) (6), (b) [REDACTED] salaries for performing their official government duties. We determined that the evidence established that RADM Ruck authorized the Foundation's bookkeeper to issue seven of the checks, beginning in May 2006.

39. We determined that the checks to (b) [REDACTED] and (b) [REDACTED] were not "awards for excellence in scientific research" as asserted by RADM Ruck. NAVPGSCOLINST 1650.1E sets out a nomination process that was not complied with regarding the checks that were issued from the Navis account. It states that nominations "must be submitted electronically to the Executive Director of the NPS Foundation and the Dean of Research." It also states that the Dean of Research and the Foundation Executive Director will accept nominations that include:

- a. A brief but complete description of the research project (no more than 5 pages), its achievement(s), the role/involvement of the NPS students in the work, and its potential transformational impact on the Department of Defense or industry.
- b. Copies of not more than three papers/reports that provide evidence in support of the nomination.
- c. A brief (maximum of two pages) resume of each nominee.

40. The requirements for an award pursuant to NAVPGSCOLINST 1650.1E were not met. Accordingly, we determined that the checks were not awards as RADM Ruck asserted, but payments in violation of 18 USC 209(a).

41. We also determined that even if the checks for (b) [REDACTED] were characterized as honoraria, they were issued to (b) [REDACTED] in violation of 18 USC 209(a). Honoraria paid to federal employees for presentations related to their official duties violate 18 USC 209(a) absent special circumstances.

Conclusion

42. The allegation is substantiated.

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Other Matter

43. We established in the Oliver and Ferrari ROIs, as well as eleven subsequent ROIs, that NPS faculty and staff improperly solicited and accepted gifts on behalf of the Navy from the Foundation in violation of the applicable gift acceptance statute and regulations. In many of these ROIs we found that RADM Ruck told a faculty or staff member that there were funds available to them and that the Foundation could and would reimburse the faculty or staff member for job related expenses they incurred. We found that in some instances, the faculty or staff member relied upon RADM Ruck and believed that what he was offering was authorized. In most instances, the faculty or staff member used the funds from the Foundation for items that the NPS Comptroller would have paid for from the President's Gift Fund.

44. RADM Ruck testified as a witness in our investigation of VADM Oliver that the funds came from donors who contributed funds to the Foundation for specific faculty members or purposes. He said that rather than gift those funds to the Navy, he contacted the faculty member and let them know that the funds were available for their use in an account at the Foundation. Thereafter, RADM Ruck authorized reimbursements from the accounts.

45. There were examples that were more aggravating than just reimbursing faculty and staff or paying vendors. For instance, RADM Ruck permitted a NPS staff member to direct a NATO employee to send a check for more than \$41,000 to the Foundation. The funds were placed into an account at the Foundation that the staff member later drew upon to fund meals and entertainment related to NPS events. In another instance, RADM Ruck approved a plan where receipts from ticket sales for two galas and a golf tournament, more than \$81,000, were deposited into a Foundation account. In both instances, the Foundation retained from 8 to 10 percent of the deposited funds (more than \$10,000) as administrative expenses. We found that in both instances the Foundation was used because faculty or staff members believed

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that the funds could not be accepted by the Navy and used for the targeted purpose.

46. We determined that based on RADM Ruck's position and experience he should have known that he was improperly avoiding the gift statute and applicable guidance. His failure to comply with the requirements had a negative impact on NPS and on the faculty and staff members that relied upon him.

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